

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ASZ/5918

MOHAMMED PROCTOR,

Plaintiff,

ANSWER TO AMENDED
COMPLAINT

-against-

CV10-5981 (SJF)(AKT)

VINCENT CAGNO #205/SCU, SERGEANT
KIERNAN #29/SCU, ERIC SICKLES
#UNKNOWN/SCU, ANDREW HEFFERMAN
(DISTRICT ATTORNEY, JOHN DOES 1-13
#UNKNOWN,

JURY TRIAL DEMANDED

Defendants.

Defendant, Andrew Heffernan, by his attorney, Christine Malafi, Suffolk County Attorney, by Arlene S. Zwilling, Assistant County Attorney, answering the plaintiff's Amended Complaint respectfully:

1. Denies, on information and belief, the factual allegations contained within the sections of the Amended Complaint numbered II.B, II.C, IV, IV.A and all unnumbered paragraphs and refers all questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

2. That the Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

3. That the damages sustained by plaintiff, if any, were caused by the plaintiff's own culpable and/or negligent conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

4. That the Amended Complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

5. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendant or otherwise ratified by defendant authorized a deprivation of plaintiff's constitutional rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

6. That this Court lacks subject matter jurisdiction.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

7. That plaintiff's claims, if any, are in whole or in part, barred by the doctrines of collateral estoppel and/or res judicata.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

8. That defendant's actions, if any, were justified by the facts and circumstances presented.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

9. That the defendant, at all times complained of, acted reasonably and in good faith in the discharge of his official duties and responsibilities.

10. That defendant acted in what he did solely pursuant to his duties and responsibilities as law enforcement and/or prosecuting official.

11. That defendant at all times acted in good faith in that he reasonably believed that he was exercising and acting within his statutory and constitutional powers.

12. That in performing such duties and responsibilities, defendant is and was protected by absolute and/or qualified Federal and/or State immunity.

WHEREFORE, defendant demands judgment against the plaintiff dismissing the Amended Complaint, together with the costs, disbursements and reasonable attorneys' fees of this action, and for such other and further relief as this Court deems just and proper.

Dated: Hauppauge, New York
March 18, 2011

Christine Malafi
Suffolk County Attorney
Attorney for Defendant
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By: _____
Arlene S. Zwilling AZ/5918
Assistant County Attorney

To:
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